



## Legal Update

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May 1, 2014

**Individuals living in a shared residential home do not qualify as “household members” according to the requirements listed under M.G.L. 209A.**

***Silva, guardian vs. Carmel, SJC No. 1143, (2014)***

**Background:** On May 22, 2012, the defendant who is intellectually disabled and resides in a residential home that is funded by the Department of Developmental Services went upstairs to the hallway outside the victim's bedroom and pushed the victim into the bathroom. As a result of being pushed, the victim suffered injuries to her head, neck, and back when she fell backward into a bathtub. Following the incident, the victim's guardian filed an application on her behalf for an abuse prevention order (209A Order). The petition included information that the defendant and the victim are not related but live in the same household, and are not in a dating relationship. Both the defendant and victim are intellectually disabled adults and reside in a residential program operated by a third party even though the Department of Developmental Services funds the house. Additionally, both the victim and defendant have court appointed legal guardians.

A district court judge granted the 209A order against the defendant and extended the order after hearing additional testimony from the guardians of the victim and defendant. Over the course of two (2) years, the defendant physically attacked the victim while living in the same house. During one incident, the defendant cornered and bit the victim. As a result of the abuse, the victim's seizures and anxiety have increased and the victim has been afraid to leave her room. Both the victim and defendant have "their own individual issues that are not working out in the house," and are supposed to keep both the victim and defendant safe. The defendant's guardian asserted M.G. L. c. 209A did not apply to two individuals who lived in a "in the same

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household," but had no family relationship. The district court judge did not find for the defendant and extended the abuse prevention order against the defendant for one year. The defendant appealed and the SJC transferred the case from the Appeals Court.

**Conclusion:** The SJC concluded that M.G.L. 209A order does not apply to residents who live in the same house run by a governmental agency because "residing together in the same household" does not satisfy the requirements of the statute. Additionally, the SJC concluded that individuals who share a common diagnosis or status, rather than marriage, blood, or other relationships that are enumerated in G. L. c. 209A, § 1, and who live together in a State-licensed residential facility, do not qualify as "household members" within the meaning of M.G. L. c. 209A, § 1. The case was remanded to District Court and the 209A order was vacated.

### **1<sup>st</sup> Issue: Who qualifies as household members under 209A?**

The SJC evaluated whether two individuals residing in the same house qualify as "household members" under M.G.L. 209A. The statute states that "persons who:

- (a) are or were married to one another;
- (b) are or were residing together in the same household;
- (c) are or were related by blood or marriage;
- (d) having a child in common regardless of whether they have ever married or lived together; or
- (e) are or have been in a substantive dating or engagement relationship."

Although the defendant and victim lived in the same facility, "there was no evidence that there was a socially interdependent relationship between the two." The defendant and the victim were assigned to the residence by a government agency and they did not voluntarily elect to live together. The defendant and victim lacked the "'family-like' connection" that falls under the protection of G. L. c. 209A but rather "the reason they resided in the same facility, was solely their individualized service plans that had been established by the department." Accordingly, the phrase "residing together in the same household" in M.G. L. c. 209A, § 1, must be interpreted in the context of the statute's other definitions of "family or household members," which include people who are or have been married, have children together, are related by blood, or have been in a substantive dating or engagement relationship. The victim and defendant in this case are not family members, are not in a family-like relationship with each other, did not marry or have a child, and were not involved in a significant dating or engagement relationship. See M.G. L. c. 209A, § 1. The sole reason the defendant and victim live together was because a state agency assigned both the victim and defendant to the same residential facility in order to receive services related to their disabilities. See *Commonwealth v. Jaffe*, 398 Mass. 50, 54-55 (1986) (eight unrelated individuals living in single-family home did not constitute one family for purpose of zoning ordinance).

Furthermore, the SJC found that since the Legislature presumably enacted M.G. L. c. 258E, which "allows individuals to obtain civil restraining orders against persons who are not family or household members," to close the gap left by M.G. L. c. 209A. *O'Brien v. Borowski*, 461 Mass. 415, 419 (2012).

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